90-376

Supreme Court, U.S.
FILED
AUG 31 1990
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

RICKY WAYNE GORDON

Petitioner

VS.

THE UNITED STATES
OF AMERICA

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

LAW OFFICES OF GREG GLADDEN
3017 Houston Avenue
P. O. Box 1028
Houston, Texas 77251
713-880-0333

LAW OFFICES OF DON GLADDEN
P. O. Box 50686
Fort Worth, Texas 76105

August 31, 1990

QUESTIONS PRESENTED

1. Under United States v. Leon, 468 U.S. 897 (1984), may the objective reasonableness of an executing officer's belief that a search warrant's description particularly describes a place be established conclusively by an officer's reading of the description, without consideration of information available to officers who would physically execute the warrant and attempt to set foot upon the described premises?

2. When determining whether an "executing officer" could reasonably presume a search warrant's description of a place to be valid, does the exception to the exclusionary rule recognized in United States v. Leon, 468 U.S. 897 (1984) allow consideration of information known to the affiant officer but not disclosed to the issuing magistrate?

LIST OF PARTIES

Ricky Wayne Gordon	Petitioner/Defendant
Greg Gladden	Counsel for Petitioner/Defendant
Don Gladden	Counsel for Petitioner/Defendant
Kathlyn G. Snyder	Assistant United States Attorney
Charley A. Davidson	Assistant United States Attorney

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I. The Fifth Circuit's decision holding that the objective reasonableness of an officer's execution of a search warrant under United States v. Leon is determined by what an officer would believe after "simply looking" at the warrant completely nullifies the particular description of place requirement of the Fourth Amendment and represents a substantial departure from existing Supreme Court precedent. 8

II. The Fifth Circuit's decision construing United States v. Leon in a manner which allows consideration of information allegedly known to an affiant officer but not disclosed to the issuing magistrate directly conflicts with the decisional law of the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the State of Nebraska. 12

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner herein prays that a Writ of Certiorari issue to the United States Court of Appeals for the Fifth Circuit to review that Court's April 26, 1990 Judgment and Order in this proceeding.

OPINIONS BELOW

The Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit from which review is sought, are reported at 901 F.2d 48 (5th Cir. 1990), and are attached as Appendix A to this Petition.

The Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit denying Petitioner's Petition for Panel Rehearing and Suggestion for Rehearing En Banc, are not reported but are attached as Appendix B to this Petition.

The Judgment and Memorandum Opinion of the United States District Court for the Southern District of Texas denying Petitioner's Motion to Suppress, from which Petitioner appealed, are not reported, but are attached as Appendix C to this Petition.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered the Judgment from which review is sought April 26, 1990. Jurisdiction is now conferred upon this Court by 28 U.S.C. Section 1254(1).[1]

STATUTES AND RULES INVOLVED

No particular statutes or rules are involved or need be reviewed for consideration of the substantive issues raised in this Petition.

STATEMENT OF THE CASE

On September 16, 1988, Special Agent Wayne Hoffmann of the Federal Drug Enforcement Administration went with a fellow officer who had been working

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[1]The time for filing this petiton for writ of certiorari began to run on June 4, 1990, the date of the judgment entered on Petitioner's timely Petition for Rehearing in the Court of Appeals. See Sup.Ct.R. 13.4 (1990).

undercover in an ongoing methamphetamine laboratory investigation, to a location in Harris County, Texas, which the undercover officer suspected to be the site of an illicit drug manufacturing laboratory. Because the area was, in the words of Agent Hoffmann, "a difficult area to find your way in and out of" (R.V,60) the purpose of going to the suspected premises was to familiarize Agent Hoffmann with the suspected lab's location.

The result of Agent Hoffmann's collaboration with the undercover officer was that on September 22, 1988, Agent Hoffmann obtained a warrant to search a premises described in the warrant as being located at "18003 10th Street, Magnolia Gardens, Harris County, Texas." (R.I,84). In the early morning hours of the following day, Agent Hoffmann along

with several other officers searched Petitioner Ricky Gordon's residence located at "18003 Riverside Drive" in Harris County, Texas. In relation to 10th Street, Riverside Drive intersects 10th Street at roughly a 90 degree angle (R.V,75), with the Gordon residence being located several blocks down from that intersection. See App. to Pet. for Cert. ("App."), A4.

Several days after the execution of the warrant, Agent Hoffmann, in the course of a routine tax records check of the premises searched, discovered that he was unable to find a "18003 10th Street" in the "Magnolia Gardens" subdivision of Harris County. (R.V,62-63). Other than the incorrect address, no description of the place intended to be searched appears in the warrant. The warrant does not contain directions to the search location, does not in any way describe

the outward appearance of the dwelling to be searched, and does not provide any other means of locating the place intended. (R.I,84).

On October 19, 1988, Petitioner was named as a defendant in a four count Indictment returned by a Federal Grand Jury sitting in the Southern District of Texas, Houston Division. On November 18, 1988, Petitioner filed a pre-trial motion contending that the search warrant purporting to authorize the search of Petitioner's residence was invalid for its failure to particularly describe the place intended to be searched as required by the Fourth Amendment, and that all evidence derived from the resulting unconstitutional search should therefore be suppressed. (R.II,214). Following a hearing on the Petitioner's Motion to Suppress held April 26, 1989 (R.V,1), the

District Court, the Honorable Kenneth Hoyt, J., presiding, denied Petitioner's motion, and a written order to this effect was subsequently entered on May 8, 1989. (R.I,62).

On appeal to the United States Court of Appeals for the Fifth Circuit the Petitioner renewed his contentions that the search warrant's description was invalid under the particularity clause of the Fourth Amendment; that the scope of the suppression inquiry was limited to information disclosed to the issuing magistrate, or to information which would have been discovered by an executing officer, other than the affiant officer, when attempting to physically execute the warrant; and that based on this information, the exception to the exclusionary rule recognized in United States v. Leon, 468 U.S. 897 (1984) did

not apply. The Court of Appeals, without reaching the question of whether a Fourth Amendment violation had occurred, rejected Petitioner's contentions and ruled the evidence seized in the search of Petitioner's residence admissible under the Leon exception. The instant Petition for Writ of Certiorari followed.

REASONS FOR GRANTING THE WRIT

I. The Fifth Circuit's decision holding that the objective reasonableness of an officer's execution of a search warrant under United States v. Leon is determined by what an officer would believe after "simply looking" at the warrant completely nullifies the particular description of place requirement of the Fourth Amendment and represents a substantial departure from existing Supreme Court precedent.

In its consideration of whether unconstitutionally seized evidence should be excluded in the instant case, the Court of Appeals correctly identified as controlling authority the Supreme Court's

decision in United States v. Leon, 468 U.S. 897 (1984), wherein the Court held that evidence seized in violation of the Fourth Amendment must continue to be suppressed where:

> "A warrant [is] so facially deficient -- i.e., in failing to particularize the place to be searched...that the executing officers cannot reasonably presume it to be valid." Id., 468 U.S. at 923.

In holding that the Government had met its burden of showing that an officer executing the instant warrant could have "presumed it to be valid" under the Leon standard, the Court of Appeals relied on two grounds.[2] As the first ground for its decision, the Court of Appeals ruled that the "facial deficiency" in the description of a search warrant, within

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[2]The second ground relied upon by the Court of Appeals is addressed by Quesiton Number 2 and the second Reason for Granting the Writ presented herein.

the meaning of the Leon exception, is determined by whether an officer who read the address in the warrant description would have known, without first attempting to execute the warrant, that the address identified in the warrant did not exist. In this connection the Court stated:

> "[O]ne who looked simply at the warrant, or at both the warrant and the supporting affidavit, would not suspect that it was invalid; any defect would appear only if one knew that Tenth Street did not have an "18003" address. It is obvious that such was not common knowledge throughout Harris County. The asserted defect in the warrant was not facial in the sense used in Leon." (App. A8-A9).

The above reasoning of the Court of Appeals seriously overlooks the practical differences between the ability of an executing officer to detect a violation of the probable cause requirement, as opposed to the particular description of

place requirement, merely from the face of a search warrant and affidavit. Although an adequate assessment of probable cause can easily be made by reading a search warrant and its supporting affidavit, such is not the case where the particular description of place requirement is in issue. As the Supreme Court recently observed in Maryland v. Garrison, 480 U.S. 79 (1987):

> "It is only after the police begin to execute the warrant and set foot upon the described premises that they will discover the factual mistake and must reasonably limit their search accordingly." Id., 480 U.S. at 88 n.14.

For at least the last 65 years, the standard for assessing the constitutional particularity of a search warrant's description has inquired into whether "[an] officer with [the] search warrant can, with reasonable effort, ascertain and identify the place intended." Steele

v. United States, 267 U.S. 498, 503 (1925). The Court of Appeals' holding in the present case that an officer's assessment of a warrant's description after "simply looking at it" is determinative of whether an executing officer could "reasonably presume" the warrant to be valid, as intended by the Supreme Court in Leon, is plainly in error and whether intended by the Court of Appeals or not, will obviously operate to render the particularity requirement of the Fourth Amendment to the United States Constitution a dead letter.

II. The Fifth Circuit's decision construing United States v. Leon in a manner which allows consideration of information allegedly known to an affiant officer but not disclosed to the issuing magistrate directly conflicts with the decisional law of the United States Court of Appeals for the Ninth Circuit and the Supreme Court of the State of Nebraska.

In both the District Court and the Court of Appeals the Petitioner argued

that the term "executing officer" in United States v. Leon, 468 U.S. 897, 923 (1984), like the term "the officer with a search warrant" in Steele v. United States, 267 U.S. 498, 503 (1925), operated to limit the scope of the Leon "objective reasonableness" inquiry in the instant case to a wholly objective assessment based solely on information disclosed to the issuing magistrate, or information which would have been discovered by an officer, other than the affiant officer, when attempting to physically execute the warrant and set foot on the described premises. Rejecting Petitioner's contention, the Court of Appeals construed Leon expansively to allow consideration of information allegedly known to the affiant officer which was not disclosed to the issuing magistrate, including the

fact that the affiant officer had personally been to the described premises prior to applying for the warrant; that the affiant officer could locate the location to be searched without reference to the description in the warrant; and that the affiant officer would be personally executing the warrant in question. See App. A10-A11 [Citing La Fave, Search and Seizure: A Treatise on the Fourth Amendment, 215 n.34 (1987)].

The lower federal and state appellate courts are sharply divided over the question of whether the Leon objective reasonableness inquiry allows consideration of facts known to the affiant officer when applying for a warrant but not disclosed to the issuing magistrate. In direct conflict with the reasoning of the Fifth Circuit in the present case, the United States Court of

Appeals for the Ninth Circuit held in United States v. Hove, 848 F.2d 137, 140 (1988) that:

> "Leon does not extend...to allow consideration of facts known only to an officer and not presented to a magistrate. The Leon test for good faith reliance is clearly an objective one and it is based solely on facts presented to the magistrate."

Expressly adopting the foregoing reasoning of the Ninth Circuit in United States v. Hove, the Supreme Court of Nebraska held in State v. Palmar, 231 Neb. 687, 698, 437 N.W.2d 503, 510 (1989) that:

> "[F]acts subjectively relied upon by the affiant but excluded from the affidavit do not establish that an officer acted in objectively reasonable reliance upon a subsequently invalidated warrant."

The United States Court of Appeals for the Eighth Circuit, on the other hand, has ruled that the Leon exception permits

consideration of information known to an affiant officer which was not disclosed to the issuing magistrate. In United States v. Martin, 833 F.2d 752, 755-756 (8th Cir. 1987) the Court held:

> "[W]hen assessing good faith [under Leon] we can and must look to the totality of the circumstances including what [the officer] knew but did not include in his affidavit."

See also id., 833 F.2d at 757 (Lay, C. J., concurring) ("Deciding whether an officer acted in good faith [under Leon] requires an examination of the totality of the circumstances beyond the four corners of the affidavit").

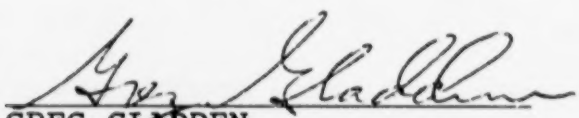
In light of the substantial period of incarceration confronting Petitioner, as well as the clear division of authority on this question critical to the issue of suppression under Leon, Petitioner respectfully submits that his Petition for Writ of Certiorari should be granted

to decide this significant and recurring question.

CONCLUSION

For the foregoing reasons, Petitioner prays that a Writ of Certiorari issue to review the April 26, 1990 Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,



GREG GLADDEN
LAW OFFICES OF GREG GLADDEN
3017 Houston Avenue
P. O. Box 1028
Houston, Texas 77251
713-880-0333

LAW OFFICES OF DON GLADDEN
P. O. Box 50686
Fort Worth, Texas 76105

UNITED STATES of America,
Plaintiff-Appellee,

v.

Ricky W. GORDON,
Defendant-Appellant.

No. 89-2889
Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

April 26, 1990.

Appeal from the United States District Court for the Southern District of Texas.

Before POLITZ, GARWOOD and JOLLY, Circuit Judges.

OPINION

GARWOOD, Circuit Judge:

Defendant-appellant Ricky W. Gordon (Gordon) appeals his conviction, following a guilty plea pursuant to Fed.R.Crim.P. 11(a)(2), of possession methamphetamine with intent to distribute it and a related firearms offense.

Gordon challenges only the district court's denial of his pretrial motion to suppress evidence, contending that the search warrant used to obtain the evidence violated the particularity requirement of the Fourth Amendment. We affirm.

Facts and Proceedings Below

On September 16, 1988, an undercover police officer showed Drug Enforcement Administration (DEA) Agent Wayne Hoffman (Hoffman) a residence that the officer identified as one of the locations at which Gordon was believed to be manufacturing methamphetamine. The same undercover officer had been involved with Gordon in the manufacture of methamphetamine. Believing that the address of the residence was 18003 Tenth Street, in Magnolia Gardens Subdivision, Harris County, Texas, Hoffman on

September 22, 1988, appeared before a United States Magistrate and obtained a search warrant for premises at "18003 10th Street, Magnolia Gardens, Harris County, Texas."

Upon executing the warrant, Hoffman discovered a methamphetamine laboratory at the residence that the undercover officer had shown him. About a week or two later, when routinely examining tax records to determine the identity of the owner of the residence searched, Hoffman learned for the first time that the address contained in the search warrant did not exist.

Gordon testified at a suppression hearing that the residence's correct address was 18003 Riverside Drive in Riverglen Subdivision, Harris County. Apparently, Tenth Street is almost perpendicular to Riverside and is marked

with a dead end sign near the intersection of the two streets.[1] The street sign at the intersection reads only "10th St." Hoffman testified that the residence was located three blocks past the intersection after turning right and was marked with a sign that read "18003."

Hoffman further testified regarding the basis for his error. He explained that as he entered the area on Garrett Street, which eventually turns into Tenth Street, he saw a sign reading "Magnolia Gardens." Hoffman asserted that he did not see a sign indicating that Riverside was not a continuation of Tenth Street.

Hoffman was indicted on October 19, 1988, in the United States District Court

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[1]As one approaches the intersection from Tenth Street, Riverside is to the right and what Hoffman explained appeared to be a little driveway is to the left. Tenth Street apparently curves into Riverside Drive.

for the Southern District of Texas, Houston Division, on four counts: distributing amphetamines on September 16, 1988, in violation of 21 U.S.C. Sections 841(a)(1) and 841(b)(1)(D) (count one); carrying a firearm during and in relation to the commission of a drug trafficking offense on September 16, 1988, in violation of 18 U.S.C. Section 924(c)(1) (count two); possessing methamphetamine with the intent to distribute it on September 23, 1988, in violation of Sections 21 U.S.C. 841(a)(1) and 841(b)(1)(C) (count three); and carrying a firearm during and in relation to the commission of a drug trafficking offense on September 23, 1988, in violation of 18 U.S.C. Section 924 (count four). Gordon originally entered a plea of not guilty and filed numerous pretrial motions, including a motion to suppress

evidence seized from 18003 Riverside Drive. Following a hearing on the suppression issue, the court denied the motion in a written order and a jury was selected.

Gordon subsequently entered a plea bargain agreement with the government and pleaded guilty to the third and fourth counts in the indictment. His plea, pursuant to Fed.R.Crim.P. 11(a)(2), was conditioned upon appellate review of the court's suppression ruling.[2] The court sentenced Gordon to one hundred twenty-one months as to the third count and to sixty months as to the fourth count, the two sentences to be served consecutively. The court also imposed two consecutive

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[2]Gordon moved for a mistrial as to the remaining counts, the government moved to dismiss those counts after Gordon waived any double jeopardy rights that could arise if the convictions were reversed on appeal, and the remaining counts were dismissed.

three-year terms of supervised release and assessed a special assessment of $100. This appeal followed.

Discussion

Gordon maintains on appeal that the district court erred by finding the search warrant to be valid and consequently not suppressing the evidence seized in the search of the Riverside residence, contending that the warrant used violated the particularity clause of the Fourth Amendment because it contained the wrong address. We need not reach this issue, however, because the evidence is admissible under the good faith exception to the exclusionary rule of United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). See 2 W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment 207 (1987) (Because of Leon, "whether the

description in the warrant in fact was constitutionally adequate is no longer determinative on the suppression issue.") (emphasis in original).

The Leon Court ruled that suppression "cannot logically contribute to the deterrence of Fourth Amendment violations" if an officer acted in objectively reasonable belief that the warrant had been properly issued. Leon, 104 S.Ct. at 3418-19 (footnote omitted). However, as one exception to that rule, the Court stated: "depending on the circumstances of the particular case, a warrant may be so facially deficient--i.e., in failing to particularize the place to be searched or the things to be seized--that the executing officers cannot reasonably presume it to be valid." Id. at 3421 (citation omitted).

Here, one who looked simply at the

warrant, or at both the warrant and the supporting affidavit, would not suspect that it was invalid; any defect would appear only if one knew that Tenth Street did not have an "18003" address. It is obvious that such was not common knowledge throughout Harris County. The asserted defect in the warrant was not facial in the sense used in Leon.

To rule in these circumstances that this warrant was "so facially deficient" that its executing officers could not "reasonably presume it to be valid," would egregiously elevate form over substance. Hoffman had sufficient probable cause to search Gordon's residence and was able to obtain a warrant from a magistrate. Further, Hoffman searched only the location intended to be searched--the residence he had seen with the undercover officer

on September 16, 1988.[3] Because Hoffman was both the affiant and the executing officer and had recently viewed the location in question, "there was no possibility the wrong premises would be searched." United States v. Burke, 784 F.2d 1090, 1093 (11th Cir.), cert. denied, 476 U.S. 1174, 106 S.Ct. 2901, 90 L.Ed.2d 987 (1986).

In Burke, supra, the Eleventh Circuit upheld the validity of a warrant even though it contained an incorrect address because, among other things, the affiant accompanied the executing officers on the search and was able to point out the proper location: Burke, 784 F.2d at 1903; accord United States v. Gahagan, 865 F.2d 1490 (6th Cir. 1989); United

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[3]We note that the erroneous address contained in the warrant did not actually exist. Consequently, there was no possibility that the wrongly-noted location could have been searched.

States v. Turner, 770 F.2d 1508 (9th Cir. 1985); United States v. Clement, 747 F.2d 460 (8th Cir. 1984). Here, despite the error in description, Hoffman "could still ascertain with reasonable effort the place intended" to be searched. 2 W. LaFave, supra, at 215 n. 34.

Under the circumstances of this case, we cannot conclude, as Gordon argues, that the good faith exception to the exclusionary rule is inapplicable. United States v. Mahoney, 712 F.2d 956, 960-62 (5th Cir. 1983). Hoffman entertained the objectively reasonable belief that the warrant had been properly issued and that it comported with the Fourth Amendment. Nothing indicates that Hoffman acted in bad faith. See 2 W. LaFave, supra, at 214-15. It obviously could not serve any law enforcement, or other, purpose to intentionally state a

nonexistent address on a warrant plainly intended to be executed at the specific place it was executed and for which there was probable cause to search. Any Fourth Amendment violation here was purely technical in terms of the interests that the amendment was designed to protect. As excluding the evidence here would not serve as a meaningful deterrent to future Fourth Amendment violations, and any marginal increment in deterrence that application of the rule would achieve is outweighed by the societal costs of suppression, we rule that the district court correctly denied Gordon's motion to suppress. Mahoney, 712 F.2d at 962.

Gordon also seeks a remand to present evidence demonstrating that one who was unfamiliar with the subject location would not be able to find it with the warrant in question. Given the preceding

authority, such an inquiry is unnecessary since Hoffman was both the affiant and the executing officer. Consequently, a remand is not called for.

Conclusion

For the foregoing reasons, the order of the district court denying Gordon's suppression motion is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 89-2889

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

RICKY W. GORDON,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Texas

ON PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC

(June 4, 1990)

Before POLITZ, GARWOOD and JOLLY, Circuit Judges.

PER CURIAM:

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

VS.

RICKY WAYNE GORDON,
Defendant.

ORDER

On Wednesday, April 26, 1989, the Court held a hearing on Defendant Ricky Wayne Gordon's Motion to Suppress Evidence. Defendant was arrested and evidence was seized at 18003 Riverside, Harris County, Texas on September 23, 1988. The warrant which authorized the search of this house bore the address "18003 10th Street, Magnolia Gardens, Harris County, Texas." Defendant argues that the incorrect address invalidates the warrant. Furthermore, Defendant contends that he was not provided with a copy of the search warrant or of the inventory list

of the items seized. The Government in its response first argues that Defendant does not have standing to contest the warrant, and second, that the mistaken address is not a sufficient basis upon which to invalidate the warrant.

After considering the evidence presented at the hearing, the Court makes the following findings regarding the issue of standing. Defendant has a permanent residence in Fort Worth, Texas. At the time of his arrest, Defendant leased the house at 18003 10th Street, Harris County, Texas. The interior of the house on 10th Street was not visible to the public. Defendant kept personal belongings at 18003 10th Street. Based on these facts, the Court finds that Defendant resided at 18003 10th Street and had a reasonable expectation of privacy at that residence. Therefore,

Defendant has standing to contest the validity of the search warrant.

Counsel for Defendant argues that the wrong address on the face of the warrant constituted a fatal flaw and caused the warrant to be issued without probable cause. Counsel proposed that an affiant may not rehabilitate a search warrant by giving additional information to substantiate the warrant after the warrant was issued and the search conducted. In support of that proposition, counsel offered several cases for the Court's consideration. A review of those cases leads the Court to conclude that probable cause for a search warrant cannot be rehabilitated after the fact. The Court agrees with counsel for Defendant that an inadequate showing of probable cause to the magistrate may not be "rescued by post-search testimony on

information known to the searching officer at the time of the search." See Rice v. Wolff, 513 F.2d 1280 (8th Cir. 1974). However, counsel misconstrues this holding in relation to the present case. The search warrant in question is sufficient, on its fact, to show probable cause. The polemical issue at present is whether the particular place to be searched as listed on the warrant was inadequate because it was the wrong address and because the residence was not otherwise described. This Court holds that the technical error in the description of the place to be searched did not render the search warrant invalid in light of the fact that the executing officer personally knew the location of the residence intended to be searched and, in fact, the intended place was indeed searched. The test for

determining the sufficiency of the search warrant is whether the place to be searched is described with sufficient particularity to enable the executing officer to locate and identify the premises with reasonable effort and whether there is any reasonable probability that another premise might be mistakenly searched. U.S. v. Alvarello, 592 F.2d 1339 (5th Cir. 1979); U.S. v. Delozier, 644 F.Supp. 135 (E.D. Tex. 1986); see also U.S. Const. Amend. 4; Fed. R. Crim. P. 41. As the Court stated in Delozier, "[i]n applying this test, this Court is aware that a search warrant must be tested and interpreted in a common sense and realistic manner, rather than a hypertechnical one. Thus, an error in the description of the place to be searched does not automatically render a search warrant invalid." Id. at 137.

In the case at bar, the address on the face of the warrant was reasonable for the executing officer to infer. The agents applying for the warrant personally knew which premises was to be searched and had previously been to that residence. No signs existed indicating that 10th Street had changed to Riverside. The only indication of a street name at the junction of 10th Street and what is now known to be Riverside was a single sign stating "10th Street." Traveling in the direction in which the executing officers approached the residence, it was reasonable to assume that they were still on 10th Street. Based upon the application of the law to these facts, the Court views the technical error in the address on the warrant as insufficient to cause the warrant to be invalid.

Additionally, the Court finds that Defendant was arrested immediately after the officers entered the residence. The search was conducted after the officers escorted Defendant away from the premises. Therefore, a copy of the search warrant and the inventory list was left at the residence. The Court finds that this was reasonable and satisfactory under the existing circumstances.

Accordingly, the Court hereby ORDERS that Defendant's Motion to Suppress Evidence is DENIED.

After reviewing all of the other motions pending in this case, the Court hereby ORDERS the following:

1. Defendant's Motion to Prohibit Prior Jury Service is GRANTED:
2. Defendant's Motion for Inspection of Jury List is DENIED;

3. Defendant's Motions for Interrogation of Prospective Jurors and for Permission to Examine Prospective Jurors are GRANTED; Venire questioning will be done in accordance with the Court's usual procedures.
4. Defendant's Motion to List Government Witnesses is DENIED. The Government will provide that list at the commencement of trial.
5. Defendant's Motion to File Additional Motions is GRANTED.
6. Defendant's Motion to Require Disclosure of Confidential Informant's Identity is RESOLVED.
7. Defendant's Motion to Require Disclosure of Relationship between the Government and its Witness is GRANTED.

8. Defendant's Motion to Dismiss is DENIED.

9. Defendant's Motion to Examine Evidence Previously Tested by State is RESOLVED.

10. Defendant's Motion for Disclosure of Electronic Surveillance is RESOLVED.

11. Defendant's Motion in Limine is GRANTED.

12. Defendant's Motion for Discovery and Inspection and Demand for Exculpatory Evidence is to be RESOLVED in accordance with the federal rules.

13. Defendant's Motion for Early Disclosure of Jencks Act material is DENIED. Jencks Act material will be disclosed at trial.

14. Defendant's Motion to Compel Disclosure of U.S. Attorney's Jury Selection Data is RESOLVED.

15. Defendant's Motion to Suppress Audio Tapes is RESOLVED.

SIGNED this 2nd day of May, 1989.

/s/Kenneth M. Hoyt
United States District Judge